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Forest Home Cemetery Corporation and Allen Sanders and Service Employees' Local No. 1 affiliated with the Service Employees International Union, AFL-CIO-CLC, Party in Interest/Party to Contract. Case 13-CA-32321

June 9, 1995

DECISION AND ORDER

BY MEMBERS BROWNING, COHEN, AND
TRUESDALE

Upon a charge filed on February 24, 1994, the General Counsel of the National Labor Relations Board issued a complaint on April 6, 1994, against the Respondent, Forest Home Cemetery Corporation, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. The Respondent did not file an answer to the complaint, but entered into a settlement agreement which was approved by the Regional Director for Region 13 on May 18, 1994. However, on October 31, 1994, the Regional Director set aside the settlement agreement for noncompliance, and on December 22, 1994, issued a reissued complaint against the Respondent, realleging the same allegations as the original complaint. Although properly served copies of the charge, complaint, and the reissued complaint, the Respondent failed to file an answer.

On May 16, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On May 17, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the reissued complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations therein will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated March 17, 1995, notified the Respondent that unless an answer were received by March 27, 1995, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation with an office and place of business in Forest Park, Illinois, has been engaged in the operation of a cemetery, including selling plots, burial services, and monuments. During the calendar year preceding issuance of the reissued complaint, the Respondent derived gross revenues in excess of \$500,000 and purchased and received at its facility goods valued in excess of \$50,000 directly from points outside the State of Illinois. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the Respondent has maintained and enforced the following unlawful and overly broad rule:

Employees are prohibited from holding any meetings or gatherings on the premises of the Employer, and they shall not engage in any work stoppage without the consent and approval of the Union. Any employee or group of employees who call such meetings, promote the same or are in attendance thereat, in violation hereof, shall be duly disciplined by both the Employer and the Union.

About February 23, 1994, the Respondent discharged and since said date failed to reinstate its employee, Allen Sanders. The Respondent engaged in this conduct because Sanders violated the rule set forth above and to discourage employees from engaging in these and other protected, concerted activities and because Sanders assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of rights guaranteed in Section 7 of the Act and has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent maintained and enforced the unlawful and overly broad rule in violation of Section 8(a)(1) of the Act, we shall order the Respondent to rescind the rule. Furthermore, having found that the Respondent has violated Section 8(a)(3) and (1) by discharging employee Allen Sanders, we shall order the Respondent to offer the discriminatee immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all references to the unlawful discharge, and to notify the discriminatee in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Forest Home Cemetery Corporation, Forest Park, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining or enforcing the following unlawful and overly broad rule:

Employees are prohibited from holding any meetings or gatherings on the premises of the Employer, and they shall not engage in any work stoppage without the consent and approval of the Union. Any employee or group of employees who call such meetings, promote the same or are in attendance thereat, in violation hereof, shall be duly disciplined by both the Employer and the Union.

(b) Discharging any employees for violating the rule set forth above or to discourage employees from engaging in these or other protected, concerted activities or because employees assist the Union or engage in concerted activities, or to discourage employees from engaging in these activities.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind its unlawful and overly broad rule.

(b) Offer Allen Sanders immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, with interest, in the manner set forth in the remedy section of this decision.

(c) Expunge from its files all references to the unlawful discharge and notify Allen Sanders in writing that this has been done.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its facility in Forest Park, Illinois, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. June 9, 1995

Margaret A. Browning, Member

Charles I. Cohen, Member

John C. Truesdale, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT maintain or enforce the following unlawful and overly broad rule:

Employees are prohibited from holding any meetings or gatherings on the premises of the Employer, and they shall not engage in any work stoppage without the consent and approval of the Union. Any employee or group of employees who call such meetings, promote the same or are in attendance thereat, in violation hereof, shall be duly disciplined by both the Employer and the Union.

WE WILL NOT discharge any employees for violating the rule set forth above or to discourage employees from engaging in these or other protected, concerted

activities or because employees assist the Service Employees' Local No. 1 affiliated with the Service Employees International Union, AFL-CIO-CLC, or engage in concerted activities, or to discourage employees from engaging in these activities

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind our unlawful and overly broad rule.

WE WILL offer Allen Sanders immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and WE WILL make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, with interest.

WE WILL expunge from our files all references to the unlawful discharge and notify Allen Sanders in writing that this has been done.

FOREST HOME CEMETERY CORPORATION